

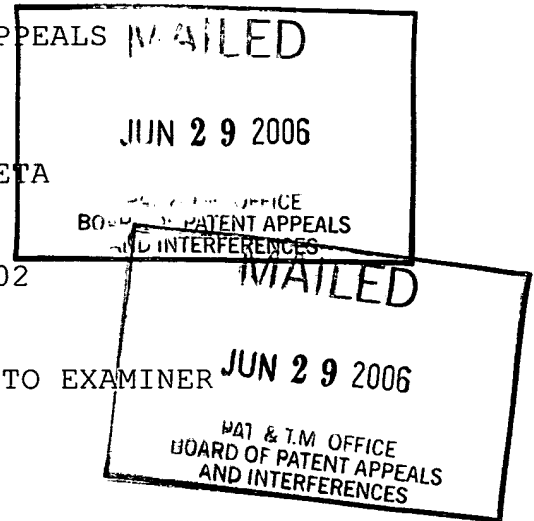
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte JONATHAN R. COPPETA

Application No. 10/007,502

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER



This application was received electronically at the Board of Patent Appeals and Interferences on June 6, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

October 12, 2005, appellant filed an Appeal Brief. A review of the file reveals that the Summary of Claimed Subject Matter does not map the claimed invention to the independent claims as set forth in 37 CFR § 41.37(c)(1)(v) which states:

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function

must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

On January 9, 2006, an Examiner's Answer was entered into the record. In the Evidence Relied Upon section, page 2, paragraph 8, the examiner has stated that "No evidence is relied upon by the examiner in the rejection of the claims under appeal." A review of the file reveals that references to Kane (U.S. Patent No. 4,524,127), Hawkins et al. (U.S. Patent No. 5,824,236), Yoshida et al. (U.S. Patent No. 5,500,869) and Meyers et al. (U.S. Patent No. 4,451,119) were applied to the statement of rejections in the Grounds of Rejection, paragraph (9) of the examiner's answer. Before further review, the examiner must submit a corrected examiner's answer that will include in the Evidence Relied Upon section, the list of references mentioned in the statement of rejections. See the Manual of Patent Examining Procedure, (MPEP) §1207.02. Appropriate correction is required.

Lastly, On May 24, 2006, the examiner mailed a communication acknowledging receipt of Appellant's Reply Brief, dated March 9, 2006. The comments made by the examiner would constitute being a Supplemental Examiner's Answer.

In accordance with MPEP §1207.05:

Every supplemental examiner's answer must be approved by a Technology Center (TC) Director or designee. The examiner may furnish a supplemental examiner's answer in response to any one of the following:

- (A) **A reply brief that raises new issues.** The examiner may NOT include a new ground of rejection in the supplemental examiner's answer responding to a reply brief. See 37 CFR 41.43(a)(2). Appellant may file another reply brief in response to the supplemental examiner's answer within two months from the mailing of the supplemental answer. See MPEP § 1208.
- (B) **A remand by the Board for further consideration of a rejection under 37 CFR 41.50(a).** See MPEP § 1211.01. In response to a supplemental examiner's answer that is written in response to a remand by the Board for further consideration of a rejection, appellant must either file: (1) a reply under 37 CFR 1.111 to request that prosecution be reopened; or (2) a reply brief to request that the appeal be maintained, within two months from the mailing of the supplemental examiner's answer, to avoid sua sponte dismissal of the appeal as to the claims subject to the rejection for which the Board has remanded the proceeding. Examiner may include a new ground of rejection in the supplemental examiner's answer responding to a remand by the Board for further consideration of a rejection. See MPEP § 1207.03.
- (C) **A remand by the Board for other purposes that are not for further consideration of a rejection under 37 CFR 41.50(a).** The examiner may NOT include a new ground of rejection in the supplemental examiner's answer responding to a remand by the Board, unless the remand is for further consideration of a rejection under 37 CFR 41.50(a) (see item B above).

Appellant may file a reply brief with two months from the mailing of the supplemental answer.

A review of the Response to Reply Brief reveals that the examiner did not obtain the necessary approval for the Supplemental Examiner's Answer.

Accordingly, it is

**ORDERED** that the application is returned to the Examiner to:

- 1) hold the Appeal Brief of October 12, 2005 defective;
- 2) request applicant to file a substitute Appeal Brief in compliance with 37 CFR § 41.37;
- 3) for the examiner to consider the substitute Appeal Brief;
- 4) vacate the Examiner's Answer mailed January 9, 2006, and issue a revised Examiner's Answer having the missing references listed under the Evidence Relied Upon section, paragraph (8);
- 5) vacate the Examiner's Acknowledgment to the Reply Brief mailed May 24, 2006, and either:

a) provide proper acknowledgment of the Reply Brief dated March 9, 2006; or

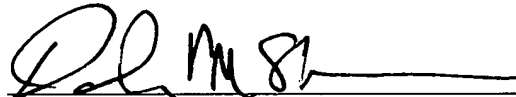
b) obtain approval for any Supplemental Examiner's Answer in response to the Reply Brief mailed May 24, 2006; and

Application No. 10/007,502

8) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By:

A handwritten signature in dark ink, appearing to read 'DMS', followed by a horizontal line.

DALE M. SHAW

Deputy Chief Appeal Administrator  
(571) 272-9797

DMS/dal

Application No. 10/007,502

J. GRANT HOUSTON  
AXSUN TECHNOLOGIES INC.  
1 FORTUNE DRIVE  
BILLERICA, MA 01821